

7. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

#### D. WAIVER APPLICATION SUBMITTED BY AGENT OR ATTORNEY

In addition to the requirements in paragraph C to this appendix, a waiver application submitted by the applicant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the applicant.

#### E. WAIVER APPLICATION SUBMITTED ON BEHALF OF A MINOR OR INCOMPETENT PERSON

In addition to the requirements in paragraph C to this appendix:

1. If a guardian or committee has not been appointed, a waiver application submitted on behalf of a minor or incompetent person must:

- i. State the applicant's relationship to the minor or incompetent person.
- ii. Provide the name and address of the person having care and custody of the minor or incompetent person.
- iii. Include an affirmation that any monies received shall be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

2. If a guardian or committee has been appointed, a waiver application on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee.

#### F. WHEN TO SUBMIT A WAIVER APPLICATION

An applicant must submit a waiver application so that it is received by the Component concerned within three years after the erroneous payment is discovered. The date of discovery is the date it is definitely determined by an appropriate official that an erroneous payment has been made. The time limit is set by 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584, whichever applies. It may not be extended or waived. Although the issue of timeliness is usually raised on initial submission (as explained in paragraph B to appendix D in this part), the issue may be raised at any point during the waiver application consideration process.

### APPENDIX D TO PART 284—PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS \$1,500 OR LESS

#### A. INITIAL COMPONENT PROCESSING

Upon receipt of a waiver application, the Component concerned must:

1. Date stamp the application on the date received.

2. Determine whether the application was received within three years after the discovery of the erroneous payment. If the application was not timely, follow the procedures in paragraph B to this appendix.

3. Investigate the circumstances relating to the erroneous payment.

4. Refer the application to the appropriate determining official (see paragraph C to this appendix) for consideration and an initial determination.

#### B. UNTIMELY WAIVER APPLICATIONS

When the Component concerned determines that a waiver application was not received within three years after the erroneous payment was discovered, the Component must send the applicant a notice of untimely receipt.

1. The notice must:

- i. Cite the applicable statute and explain the reasons for the finding of untimely receipt.
- ii. State that the application was not received within the statutory time limit and may not be considered unless that finding is reversed on appeal.
- iii. Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph B.2.).
- iv. State that the statutory time limit may not be extended or waived.

2. An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice and may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

- i. Explain the points of, and reasons for, disagreement with the notice.
- ii. Have any documents referred to in the rebuttal attached.
- iii. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

3. If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and the application may not be considered.

4. If the applicant submits a timely rebuttal, the Component must consider the rebuttal.

i. If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on its merits.

ii. If the Component does not reverse the finding of untimely receipt, the Component

must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (*see* paragraph C.1. to this appendix) for an initial determination on the issue of untimely receipt. The Component does not need to investigate the merits of the application before forwarding the record.

5. After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in paragraph D to this appendix. In addition, if the determining official finds that the application was timely, the official may:

- i. Return the application to the Component concerned for processing on its merits according to this part, or
- ii. Consider the application and make an initial determination on its merits according to paragraph C.2. to this appendix.

#### C. INITIAL DETERMINATIONS

The standards in appendix B to this part must be applied when considering the merits of a waiver application. After making an initial determination, the determining official must follow the procedures at paragraph D to this appendix.

1. The officials listed and referred to in this part as determining officials shall consider waiver applications and take the appropriate action described in paragraph C.2. to this appendix. These officials are identified as follows:

- i. The Head of a non-DoD Component or designee for debts of Uniformed Services personnel resulting from that Component's activity.
- ii. The Director, DoDEA or designee for debts of civilian employees resulting from that Component's activity.
- iii. The Director, NSA or designee for debts resulting from that Component's activity.
- iv. The Director, DFAS or designee for debts resulting from the DoD Component activity not included in paragraphs C.1.ii. and C.1.iii. to this appendix.

2. The officials listed in paragraph C.1. to this appendix may make an initial determination for the following:

- i. Whether or not a waiver application was received within three years after the discovery of the erroneous payment.
- ii. Deny a waiver application in its entirety.
- iii. Grant all or part of a waiver application.

#### D. PROCESSING AFTER AN INITIAL DETERMINATION

After making an initial determination, the determining official must:

1. Notify the applicant. The notification must explain:
  - i. The determination and the reasons for it.

- ii. The appropriate Component action to resolve the debt as a consequence of the determination if it is or becomes a final action (the finality of an initial determination is explained at paragraph E to this appendix).

- iii. The appeal process (as explained in appendix F to this part) if the determination does not grant the entire application or does not contain a finding of timely receipt.

2. Notify the Component concerned if the determining official is not an official of the Component concerned when and if the determination is a final action. The notice must explain:

- i. The determination and its reasons.
- ii. The appropriate Component action to resolve the debt as a consequence of the determination.

#### E. WHEN AN INITIAL DETERMINATION IS FINAL

A final action is an initial determination that grants the entire waiver application or finds that the application was timely received. Also, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown).

### APPENDIX E TO PART 284—PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS MORE THAN \$1,500

#### A. INITIAL COMPONENT PROCESSING

Upon receipt of a waiver application, the Component concerned must:

1. Date stamp the application on the date received.
2. Determine whether the application was received within three years after the discovery of the erroneous payment. If the application was not timely, follow the procedures in paragraph B in this part.
3. Investigate the circumstances relating to the erroneous payment.
4. Refer the waiver application to the appropriate determining official (*see* paragraph C to this appendix) who after applying the standards in appendix B in this part may either:
  - i. Deny the application in its entirety, if appropriate, and follow the procedures in appendix D to this part, or
  - ii. Refer the application with a recommendation that part or all of the application be granted to the DOHA for consideration and an initial determination under paragraph C to this appendix. The determining official must send the entire record and prepare and submit a recommendation and administrative report (as explained in paragraphs D and E to this appendix) with the application.